

8 Official Opinions of the Compliance Board 27 (2012)

- ◆ Minutes
 - ◇ Procedures, practices in violation:
 - ▶ Treating minutes request made in person as a Public Information Act request
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January 30, 2012

Re: Maryland Transportation Authority (Craig O'Donnell, complainant)

We have considered the complaint of Craig O'Donnell ("Complainant") that the Maryland Transportation Authority (the "Authority") is violating the Open Meetings Act by refusing to provide electronic copies of minutes for committee meetings held in 2007 and 2008.

Background

According to Complainant, he appeared at the Authority's office and requested various minutes. The staff member to whom he spoke provided some minutes, informed him that she could not locate the 2007- 08 committee minutes that day because she was preparing for a meeting, and offered to send them to him at no charge. Complainant states that he agreed and left. The staff member died. The Authority then instructed Complainant to submit a Public Information Act ("PIA") request for the minutes. In response to his PIA request for electronic copies of the minutes, the Authority advised him that it would supply copies of the minutes, that the search and preparation of the documents would take seven hours, two hours of which would be provided at no cost to him, and that it would forward the copies upon its receipt of his payment of \$307.

According to the Authority, Complainant's request for minutes is subject to the Public Information Act, not the Open Meetings Act (the "Act"). The Authority does not dispute the fact that Complainant came to its office. The Authority states that it was not treating the committees as public bodies during those years, did not keep the minutes "in accordance with the [Act]," was not required by the Act to retain them for more than one year, and has no obligation to provide them without charge.

The facts on the “public body” status of these two committees are set forth at length in 7 *OMCB Opinions* 176, 182-84 (2011). As the Authority states, it adopted a resolution in 2007 delegating certain contract approvals to the Capital Committee. In 7 *OMCB Opinions* at 182-84, we concluded that such formally-adopted delegations of the Authority’s functions to the committee rendered it a “public body” subject to the Act, and we referred to a delegation by a resolution adopted March 14, 2007. We stated our inability to reach a conclusion on whether the Finance Committee functioned as a public body and noted that the Authority formalized the status of that committee in November, 2010. We stated,

If the November 2010 resolution ... merely formalized a procedure by which the Finance Committee functioned as an arm of the Authority, we encourage the Authority not to stand on that formality with respect to content in the Committee’s minutes that would not have been the subject of a properly-closed meeting.

Id. at 181.

Discussion

This complaint is but the latest chapter in the ongoing history of the Complainant’s efforts to acquire documents from the Authority via the Open Meetings Act and the Authority’s resistance to those efforts.

In 2010, Complainant alleged that the Authority had violated the Act by not providing documents. He had not gone to the Authority’s office to inspect documents; rather, he had requested that copies be sent. In response, the Authority stated that it had informed Complainant that he “could view copies in the office of the Authority during normal business hours,” that it was still searching for certain closing statements, and that it had no duty to provide copies. We stated:

For the reasons explained below, we find that the Authority violated the Open Meetings Act in that copies of written closing statements were not maintained in a manner in which the body could offer access as required under the Act. However, a failure to provide copies does not violate the Open Meetings Act. While the Open Meetings Act grants the public a right to review certain

documents at the office of the public body during normal business hours, the right to obtain copies of such material would be governed by the Public Information Act – not the Open Meetings Act.

7 *OMCB Opinions* 30 (2010).

We further explained:

In terms of public access, we have previously held that public access to minutes of a meeting governed by the Act derives from the Act itself. *See, e.g., 6 OMCB Opinions* 187, 190 (2009). ... Once approved by a public body, “minutes of an open meeting are to be available upon request during regular business hours.” 5 *OMCB Opinions* 14, 16 (2006). Thus, someone wishing to review minutes of a public body’s meetings need not invoke the Public Information Act. *Id.* ... Thus, a member of the public is entitled to visit the office of a public body during regular business hours and review copies of these documents. The Act only requires a public body to maintain copies of these documents for a year following the meeting. §§10-508(d)(5); 10-509(e). However, we disagree with the Authority’s suggestion that, should a public body choose to retain copies for a longer period, the right of the public to review these documents under the Act is somehow extinguished.

Id. at 33.

As we explained very recently in 8 *OMCB Opinions* 1 (2012), when a public body cannot fulfill a person’s request for on-the-spot inspection of old minutes, it may agree with that person to accommodate the request by providing copies reasonably promptly and thereby achieve substantial compliance with the Act.¹ And, as we explained to the Authority in 2010,

¹ There, we stated: “[a] public body may not treat a request to inspect minutes at the public body’s office as a PIA request, subject to the PIA procedures for requesting documents. A public body thus may not require a person to submit a written request for the minutes of its open meetings.” *Id.* at 3. We then observed, “In this particular matter, where the Complainant was also requesting documents subject

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when a public body has transferred meetings documents to storage, “we would expect that the public body would agree to retrieve such records if still in its custody within a reasonable period.” 7 *OMCB Opinions* at 33, n. 3. Such arrangements do not turn a person’s §10-509 (d) request into a PIA request.

The Act, however, only applies to the minutes of a “public body” as defined by the Act. The Capital Committee was a public body as of March 14, 2007. SG §10-509(d) therefore applies to the minutes of its meetings after that date and, read strictly, entitled Complainant to inspect them on November 3, 2011, when he went to the Authority’s office. The Authority was unable to provide that access. When a public body is unable to comply with the strict requirement of § 10-509, as may well occur with a request for old minutes, we expect it to offer a reasonable substitute for providing prompt inspection. The staff member’s plan for compliance would have been one such reasonable substitute had the Authority adhered to it after learning that Complainant had actually presented his request in person. Instructing him to submit a written request for electronic copies and then treating that request as a request billable to him under the PIA was not a reasonable substitute. See 8 *OMCB Opinions* 1. While we have no authority to enforce the accommodation apparently reached between Complainant and the Authority’s staff member, (or any other agreement, for that matter), we do find that the Authority violated SG §10-509(d) by failing to provide a reasonable substitute for prompt inspection of the minutes.

We thus again recognize that public bodies cannot always satisfy a request for old minutes instantaneously. When they cannot, they should promptly fashion an alternative method of inspection. Likewise, although the Act does not require members of the public to schedule an appearance at a public body’s office in advance, a requester of old minutes might either find it efficacious to do so or, otherwise, be prepared to come back to the office. Here, however, the Authority did not even provide Complainant with the option of returning for an in-office inspection.

With respect to the Finance Committee minutes, we direct both parties to 7 *OMCB Opinions* 176, 181. Just as we could not reach a conclusion there on whether the Finance Committee was a public body before 2010, we cannot

¹ (...continued)

to PIA procedures rather than Act procedures, and the Commission in fact produced the minutes and responded to the PIA request within days of receiving it, the Commission’s procedural violation does not appear to have substantially interfered with the Act’s broad goal of transparency.” *Id.*

reach a conclusion here on whether its practices before that date violated the Act.

Conclusion

For the reasons stated above and in 8 *OMCB Opinions* 1, we conclude that the Authority did not comply with the Act's requirement that a public body make even old minutes available for inspection to the public, whether by providing on-the-spot access or, as would have been appropriate for the multiple-meeting request made here, a reasonable substitute for that access. We state, again: (1) a public body may not treat an SG §10-509 in-person request for inspection as a PIA request and (2) a person's right to inspect documents under the Act is not extinguished by the fact that the public body has retained minutes for longer than the retention period required by the Act. We encourage the Authority to adhere to these principles and commend it for its effort to prevent future such problems by posting its minutes and those of its committees on its website.

OPEN MEETINGS COMPLIANCE BOARD

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